

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH.

ITA No. 363 of 2006
Date of decision: 14.12.2006

Commissioner of Income Tax, Hisar

....Appellant

vs.

Shiv Kumar

..Respondent

CORAM: HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE.
HON'BLE MR.JUSTICE J.S.NARANG.

Present: Mr. Yogesh Putney, Advocate, for the petitioner.

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J.S.NARANG, J.

This judgment would dispose of Income Tax Appeals bearing No. 363, 364, 365 and 366 of 2006, as the common questions of law have been raised for consideration of this Court, though the parties are different but the factual status remains the same i.e. The parties in the aforesaid appeals have received enhanced compensation in regard to their respective lands and that the relative interest factor, has ensued accordingly. It may also be noticed that the assessment years are also different but that would not affect the collective disposal pursuant to the instant judgment. The disposal of the matter by the Income Tax Appellate Tribunal (ITAT) deals with the similar questions in issue in all the appeals.

For brevity, the facts are being taken from ITA No.363 of 2006 (**Commissioner of Income Tax, Hisar v. Shiv Kumar**). The assessee in

the instant appeals are co-owners of the agricultural land situated at Dabra Road, Rohtak. The land in question was acquired by the Land Acquisition Officer, Hisar,. The initial compensation was awarded by the Land Acquisition Collector. Being dissatisfied the owners of the land sought reference under the Land Acquisition Act, 1899 before the District Judge, Hisar, for claiming the enhancement of compensation. The reference was answered in favour of the assessee granting enhancement. The parties to the reference were not satisfied and both of them filed respective appeals before this Court.

The assessees received enhanced compensation during the assessment year 1992-93 and that the interest payable statutorily and granted by the Reference Court had also been received. Similarly, for the assessment year 1996-97 the enhanced compensation awarded was received accordingly. No return of income had been filed by them, therefore, notice under Section 148-A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) was issued. In response thereto the respective returns have been filed in the year 1992-93 and 1996-97 offering interest on enhanced compensation to tax on receipt basis . Assesseees had also claimed exemption under Section 54B of the Act on the ground that capital gains on compulsory acquisition of land were utilized for the purchase of agricultural lands, therefore, no tax on capital gains was payable. As far as the assessment year 1996-97, is concerned, the claim of exemption under Section 54B of the Act, was allowed by the Assessing Officer. So far as the assessment year 1992-93, is concerned, it had been found that the assessee had purchased the agricultural land in the name of Smt.Sarbati Devi their mother and not in their respective names. Thus, the investment having not

been made in the name of the assesseees, the claim of deduction under Section 54-B of the Act, had been rejected, which was also rejected by the Commissioner of Income Tax (Appeals). Dissatisfied with the same, the appeals had been filed before the Income Tax Appellate Tribunal. So far as the orders passed relating to the assessment year 1996-97 are concerned, the assesseees filed appeals challenging the levy of interest under Section 234B of the Act on the ground that the actual receipts of moneys were received after the due date for filing the return of income for the relevant assessment year, therefore, no interest could be charged under Section 234B of the Act. The additional ground had been submitted to the effect that the interest income was offered to tax on receipt basis in both the assessment years, therefore, the same was not subjectable to tax on receipt basis but the interest had to be spread over the entire period it pertained to. Reliance had been placed upon the dicta of the Hon'ble Supreme Court rendered in re: **Rama Bai v. CIT, 181 ITR 401 (SC)**.

After considering the claim of the assessee and by applying the dicta of the Hon'ble Supreme Court rendered in re: **Rama Bai's case** (supra), the additional grounds in the appeals had been allowed to be taken on record.

The assesseees produced a copy of the judgment and decree rendered by the trial Court, whereby it has been declared that the properties purchased by the assesseees, in the name of their mother Smt. Sarbati Devi, in fact belong to the assesseees. A copy of the judgment and decree of the trial Court had been allowed to be taken on record by way of additional evidence. Resultantly, the Tribunal while allowing the appeal has remitted the matter to the Assessing Officer for reconsidering the claim of

exemption under Section 54B of the Act in view of the additional evidence taken on record. The other grounds raised by the assesseees were not pressed, therefore, the same were declined vide order dated May 9, 2005.

The revenue has raised the following questions of law for consideration of this Court :-

(1) Whether on the facts and circumstances of the case, the Hon'ble ITAT is right in law in directing to tax interest income received on enhanced compensation for the year to which it relates without appreciating that the interest income was offered for taxation purposes by the respondent in the return of income filed in pursuant to notice u/s 148 and self assessment tax was also paid by the Respondent on the above income and the judgment of Hon'ble Supreme Court in Rama Bai's case was already in existence on the date of filing of return by the Respondent ?

(2) Whether on the facts and circumstances of the case, the Hon'ble ITAT is right in law in entertaining the additional ground of appeal which was neither before the A.O nor Id.CIT (A) without appreciating that there is no such order of Id.CIT (A) against which the additional ground has been raised and entertained by the Hon'ble ITAT ?

We have heard learned counsel for the revenue and have perused the paper book and also the order dated May 9, 2005 passed by the Tribunal.

We do not find any infirmity in the order. A categorical reference has been made to the dicta of the Hon'ble Supreme Court rendered in

Rama Bai's case (supra) whereby it has been held that interest cannot be brought to tax in lumpsum in the year of receipt but has to be spread over the period to which it pertains. It has been contended by the learned counsel for the revenue that this plea had not been taken by the assessee at the initial stage, therefore, were not entitled to set up the plea before the Tribunal. We may observe in this regard that the additional plea/ground had been allowed to be taken for adjudication of the matter between the parties and rightly so. Resultantly, the relief has been granted accordingly. So far as the judgment and decree of the trial Court is concerned the same has also been taken on record by way of additional evidence and that the matter has been remitted for re-consideration of the Assessing Officer in regard to the question of exemption under Section 54B of the Act. We find no merit in the appeal and that no question of law arises for consideration of this Court.

Dismissed.

(VIJENDER JAIN)
CHIEF JUSTICE

(J.S.NARANG)
JUDGE

December 14, 2006
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